

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAURICE VASTER,
Plaintiff
v.
CHARLES HUDGINS, LAMAR NEAL,
CARLOS SABALA, and WAYNE LEE,
Defendants

CASE NO. CV-13-5031-EFS

**ORDER DENYING DEFENDANTS' MOTION
TO DISMISS**

CHARLES HUDGINS, LAMAR NELSON,
CARLOS SABALA, and WAYNE RUSSELL,
Defendants.

Before the Court, without oral argument, is Defendants' Motion to Dismiss. ECF No. 18. Defendants Charles Hudgins, Lamar Nelson, S Sabala, and Wayne Russell ask the Court to dismiss Plaintiff Vaster's pro se complaint because he failed to exhaust his administrative remedies. Mr. Vaster opposes the motion, contending his failure to exhaust was due to Defendants' own conduct and therefore the Court should deem him to have exhausted his administrative remedies. For the reasons set forth below, the Court denies Defendants' motion.

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1 **A. Background¹**

2 Mr. Vaster is an inmate at Coyote Ridge Corrections Center
 3 ("Coyote Ridge"), who was permitted to work at Coyote Ridge's laundry
 4 room, which is managed by Correctional Industries (CI). ECF No. 6 at
 ¶ 4.1. Mr. Vaster had worked in the laundry room for approximately
 5 nine months when on May 31, 2011, Defendants Sergeant Russell and
 6 Correctional Officers (C/Os) Sabala and Nelson accused Mr. Vaster of
 7 stealing a pair of thermal underclothing. *Id.* ¶¶ 4.1 – 4.4; ECF No.
 8 19-3 at 57. They escorted Mr. Vaster to the CI office for questioning
 9 regarding his thermals. ECF No. 6 ¶ 4.5; ECF No. 19-3 at 57. Mr.
 10 Vaster advised that the thermals were his, and C/O Ceballous confirmed
 11 that the thermals were listed on Mr. Vaster's property matrix. *Id.*
 12 Nevertheless, Sergeant Russell directed C/O Sabala to escort Mr.
 13 Vaster to his cell and search for thermals that were not issued to Mr.
 14 Vaster. *Id.* ¶ 4.6. No extra thermals were found. *Id.*

15 Mr. Vaster advised C/O Sabala that he believed he was being
 16 harassed and that he would file a staff misconduct grievance against
 17 him, Sergeant Russell, and C/O Nelson. *Id.* ¶ 4.7. C/O Sabala
 18 responded that Mr. Vaster would receive a disciplinary infraction.
 19 *Id.* ¶ 4.8.

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 22 ¹ The "background" section is based on the Complaint's, ECF No. 6, factual
 23 allegations, see *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009), as
 24 well as the administrative documents provided by the parties and the
 25 filings in Mr. Vaster's prior lawsuit, E.D. Wash. CV-11-5164-CI.
 26 Neither party disputed the authenticity of the provided documents.

1 C/Os Sabala and Nelson filed a disciplinary infraction against
 2 Mr. Vaster on June 3, 2011, alleging that he committed theft in
 3 violation of WAC-555.² *Id.* at 4.9; see ECF No. 19-3 at 57.

4 A disciplinary hearing was held on June 9, 2011. *Id.* ¶ 4.11;
 5 ECF No. 19-3 at 50 & 57. Mr. Vaster participated in the hearing, and
 6 the theft charge was dismissed in his favor as there was no evidence
 7 he stole thermals. ECF No. 6 ¶ 4.12; ECF No. 19-3 at 50 & 57.

8 After the infraction was dismissed in his favor, Mr. Vaster
 9 resumed work at the CI laundry. ECF No. 6 ¶ 4.13. Concerned with Mr.
 10 Vaster's return to the laundry room, Sergeant Russell and C/Os Sabala
 11 and Nelson contacted CI General Manager Hudgins and advised that Mr.
 12 Vaster should be terminated from CI. *Id.* Mr. Hudgins thereafter
 13 terminated Mr. Vaster's employment on the grounds that Mr. Vaster was
 14 suspected of forcing other inmates to steal laundry from the clothing
 15 room. *Id.* ¶¶ 4.14 & 4.15.

16 On June 9, 2011, the date of the favorable disciplinary hearing
 17 decision, Mr. Vaster filed an Offender Complaint, Log I.D. No.
 18 1111602, against Sergeant Russell and C/Os Nelson and Sabala,
 19 alleging:

20 C/Os Sabala, L. Nelson & Sgt. Russell . . . maliciously
 21 conspire[ed] to falsely accus[e] me of "stealing," on 5-31-
 11, at approximately 7:40 a.m. I passed thru the clean room

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 23 ² Defendants provided an "Infraction Review Checklist" dated May 31, 2011.
 24 ECF No. 19-3 at 49. The Court is unsure how this document relates to
 25 this lawsuit as the individual who signed the document, Mauro Grotiz,
 26 does not appear to have been involved in the infraction relating to this
 lawsuit.

area wearing a set of thermals on my way to work. At approx. 8:30 a.m. while performing my work details I was escorted into the laundry staff restroom and confiscated the set of thermals I was wearing. I was then informed that I would be wrote up for stealing and was escorted from my work and haven't been able to return. Additionally, Sgt. Russell asked me if I had two pair of thermals on my clothing matrix? My reply was "yes, and I arrived from another facility with them." Upon review of my clothing matrix it clearly states or shows that I did arrive here with two sets of thermals. Because of their actions they deliberately place my job in jeopardy with malice and unprofessionalism.

ECF No. 19-3 at 48. On June 16, 2011, the grievance coordinator returned the Offender Complaint because "[i]t is not a grievable issue" since "working assignments - hiring/firing are classification issues and the complaint must go through the CPM's office. See #9 on backside of this form." *Id.* After receiving the grievance coordinator's response, Mr. Vaster submitted another Offender Complaint, which was given the same Log I.D. No. 1111602:

I WANT TO GRIEVE: Sgt. Russell, C/O Sabala & C/O L. Nelson for staff misconduct and maliciously conspiring in abusing governing WAC # 137-28-270/DOC # 460.000 Policies. On 5-31-2011 at approx. 7:45 a.m. I passed thru the clean room wearing a set of thermals on my way to work. While at work at approx. 8:30 a.m. I was ordered and escorted by Sgt. Russell & C/O Sabala to the laundry staff restroom an [sic] instructed to give C/O Sabala the set of thermals I was wearing. I informed them that my "clothing matrix" would verify authorization which was later confirmed: the set of thermals I was wearing was also not new.

ECF No. 19-3 at 53 (emphasis in original).

On June 20, 2011, Mr. Vaster contacted his counselor for assistance with returning to work. *Id.* ¶ 4.16. Although Coyote Ridge's procedures specify that an inmate's counselor is to receive work termination paperwork, Mr. Vaster's counselor had not received Mr. Vaster's work termination paperwork. *Id.* ¶ 4.17; ECF No. 19-3 at

1 59. That same day the grievance coordinator responded to Mr. Vaster's
 2 June 16, 2011 Offender Complaint as follows: 1) "[t]he formal
 3 grievance/appeal paperwork is being prepared," and 2) "[s]ee pp. #13
 4 of the offender grievance manual disciplinary action - work related
 5 vs. classification matters." ECF No. 19-3 at 53. The grievance
 6 coordinator also contacted CI General Manager Hudgins. ECF No. 19-3
 7 at 61. Mr. Hudgins advised that Mr. Vaster was not permitted to work
 8 in the laundry room because he was suspected of encouraging laundry
 9 porters to sell laundry. *Id.*

10 Mr. Vaster met with the grievance coordinator again on July 21,
 11 2011, and asked the grievance coordinator to re-submit the initial
 12 grievance that he had filed on July 16, 2011. ECF No. 19-3 at 52.

13 On August 1, 2011, Mr. Vaster filed a Level I-Initial Grievance:
 14 again given Log I.D. No. 1111602. Mr. Vaster's grievance was the same
 15 as listed on his prior Offender Complaint. That same day, the
 16 grievance coordinator responded,

17 Staff members, like all people are human and at times will
 18 make wrong decisions or errors in judgment. The fact that
 19 you were exonerated from the infractions is proof that the
 20 system has the proper checks and balances installed to
 correct such errors. The grievance office would like to
 extend an apology for troubles and time lost that this
 incident has caused.

21 The fact that you have been cleared of the infraction
 22 charges allows you the right to contact job assignments to
 begin the process to regain your employment status that you
 23 had before the infraction was levied.

24 ECF No. 19-3 at 51.

25 The next day, Mr. Vaster filed another Offender Complaint, again
 26 given Log I.D. No. 1111602, which stated:

1 I WANT TO GRIEVE: I'm [sic] appealing the decision from the
 2 initial grievance (I.D. #1111602) to the next level. The
 3 falsification and defamation of my character was never
addressed as a part of the suggested remedy.

4 ECF No. 19-3 at 69 (emphasis in original). The grievance coordinator
 5 responded that formal grievance paperwork would be prepared for a
 6 Level II appeal. *Id.*

7 Beginning August 10, 2011, an investigation was performed by
 8 Richard Robideau regarding Mr. Vaster's Log I.D. No. 1111602. ECF No.
 9 19-3 at 59-60. After conducting the investigation, Mr. Robideau
 10 concluded there was bias against Mr. Vaster by the Coyote Ridge staff.
 11 *Id.* Mr. Robideau recommended that Mr. Vaster be given his laundry job
 12 back and receive incentive pay. *Id.* The record does not identify who
 13 was given this investigative report or what action, if any, was taken
 14 by Coyote Ridge in response. Based on the current record, it appears
 15 however that no action was taken in Mr. Vaster's favor, and it appears
 16 that the report was not given to Superintendent Uttecht given his
 17 statement on October 30, 2011, as set forth below.

18 On September 27, 2011, Mr. Vaster filed an Appeal to Level II,
 19 also Log I.D. No. 1111602, which stated: "I am appealing the decision
 20 from the initial greivance [sic] ID #1111602 to the next level. The
 21 falsification [sic] and defamation of my character was never addressed
 22 as part of the suggested remedy." ECF No. 19-3 at 54. On September
 23 30, 2011, Superintendent Uttecht responded:

24 Your level II grievance was investigated by CUS R.
 25 Robideau. In conclusion of the investigation, there is no
 26 documentation to support the allegation of biased behavior
 by staff. You have the choice to reapply for a CI job.

1 Contact your counselor for the CI application and the
2 refferal [sic] process.

3 *Id.* On October 4, 2011, Mr. Vaster sought a Level III appeal of the
4 Level II denial of his grievance. ECF No. 19-3 at 70-71. His Level
5 III appeal was denied. *Id.*

6 On December 29, 2011, Mr. Vaster filed a lawsuit against C/Os
7 Sabala and Nelson, Sergeant Russell, CI General Manager Hudgins, and
8 Superintendent Uttecht. CV-11-5164-CI, ECF No. 1. In part, Mr.
9 Vaster alleged that Defendants conspired to subject him to false
10 disciplinary charges and retaliated against him. *Id.* Defendants
11 filed a motion to dismiss submitting, in part, that Mr. Vaster failed
12 to exhaust available administrative remedies as to the claim that
13 Defendants retaliated against him for filing grievances. CV-11-5164-
14 CI, ECF No. 21 at 11-12. In response, Mr. Vaster agreed that he
15 failed to file a grievance pertaining to his claim of retaliation,
16 thereby conceding that he failed to exhaust his retaliation claim.
17 CV-11-5164-CI, ECF No. 27. Mr. Vaster asked the court to dismiss the
18 lawsuit without prejudice as he sought "to revisit the issues upon
19 properly exhausting administrative remedies." *Id.* at 2. On September
20 19, 2012, the court dismissed his lawsuit without prejudice and cited
21 to *Booth v. Churner*, 532 U.S. 731, 741 (2001), for the proposition
22 that a "complaint is dismissed without prejudice for failure to
23 exhaust administrative remedies." CV-11-5164-CI, ECF No. 30 at 2.

24 In September 2012, Mr. Vaster sent a letter to Mr. Uttecht
25 regarding Defendants' ongoing retaliation against him. ECF No. 6 ¶
26 4.22. Mr. Uttecht did not respond. *Id.*

1 On October 8, 2012, Mr. Vaster filed an Offender Complaint,
2 alleging that his continued request to be returned to his laundry job
3 was being arbitrarily denied, and he requested that he be returned to
4 CI employment with back pay. ECF No. 27, Ex. 1. This grievance was
5 combined with the prior grievances and issued the same Log I.D. No.
6 1111602. *Id.* In response, the grievance coordinator stated, "You
7 grieved this issue to a Level III conclusion on 11/10/11. This
8 complaint will not be reopened or reviewed." *Id.*

9 Also, on October 8, 2012, Mr. Vaster wrote letters to
10 Superintendent Uttecht and CI General Manager Hudgins seeking relief
11 from the claimed retaliation he was suffering and to be reinstated to
12 his CI employment with back pay. ECF No. 27, Ex. 2. Mr. Vaster
13 received no response and continued to be denied the opportunity to
14 work in the laundry room.

15 On March 14, 2013, Mr. Vaster filed this Complaint, ECF No. 6,
16 asserting that Defendants violated his Equal Protection rights and
17 retaliated against him for filing grievances. On June 3, 2013, the
18 Court ordered Mr. Vaster to amend his Complaint, finding that his
19 Equal Protection claim and his claims against Superintendent Uttecht
20 were not supported by adequate factual allegations. ECF No. 7. Mr.
21 Vaster did not amend his Complaint within the applicable deadline;
22 accordingly, on July 31, 2013, the Court dismissed those identified
23 claims. ECF No. 8. The Court directed service as to the remaining
24 retaliation claim against Defendants Russell, Nelson, Hudgins, and
25 Sabala. *Id.*

1 On September 23, 2013, Defendants filed the instant Motion to
 2 Dismiss. ECF No. 18. Mr. Vaster was given notice regarding his
 3 response responsibilities as to a motion to dismiss based on failure
 4 to exhaust available administrative remedies. ECF No. 20. Briefing
 5 ensued. ECF Nos. 26-28.

6 **B. Standard**

7 A motion to dismiss for failure to exhaust administrative
 8 remedies is an unenumerated 12(b) motion. *Wyatt v. Terhune*, 315 F.3d
 9 1108, 1119 (9th Cir. 2003). The Court may look outside the pleadings
 10 and decide disputed issues of fact to determine whether administrative
 11 remedies were exhausted. *Id.* The Court did look outside the
 12 pleadings by considering the administrative documents provided by the
 13 parties as well as the documents filed in Mr. Vaster's prior case, CV-
 14 11-5164-CI.

15 **C. Analysis**

16 The Prison Litigation Reform Act (PLRA) provides in pertinent
 17 part:

18 No action shall be brought with respect to prison
 19 conditions under section 1983 of this title, or any other
 20 Federal law, by a prisoner confined in any jail, prison, or
 other correctional facility **until such administrative
 remedies as are available are exhausted.**

21 42 U.S.C. § 1997e(a) (emphasis added). In *Woodford v. Ngo*, the
 22 Supreme Court analyzed this exhaustion requirement. 548 U.S. 81
 23 (2006). The Supreme Court held that in order to satisfy the
 24 exhaustion requirement a prisoner "must complete the administrative
 25 review process in accordance with the applicable procedural rules,
 26 including deadlines, as a precondition to bringing suit in federal

1 court." *Id.* at 88. The Supreme Court concluded that this
 2 interpretation 1) ensures the agency has the opportunity to correct
 3 its own mistakes before being sued in federal court, and 2) promotes
 4 efficient claims resolution. *Id.* at 89.

5 Here, Defendants argue Mr. Vaster failed to exhaust his
 6 administrative remedies as to his grievance that Defendants retaliated
 7 against him by rejecting his requests to be returned to work at the CI
 8 laundry site. Defendants submit Mr. Vaster's retaliation-based claim
 9 must have been filed within twenty-one days of his June 9, 2011
 10 Offender Complaint per Coyote Ridge grievance policies. Because Mr.
 11 Vaster failed to so file his retaliation-based grievance in this time
 12 period, Defendants contend Mr. Vaster failed to properly exhaust his
 13 administrative remedies as to this claim. However, Mr. Vaster's
 14 retaliation-based grievance is one of continued retaliation by
 15 Defendants. Mr. Vaster does not simply allege that Defendants
 16 retaliated against him in 2011; rather he alleges they continue to
 17 arbitrarily deny him the opportunity to return to the laundry work
 18 site. Accordingly, although Mr. Vaster's October 8, 2012 Offender
 19 Complaint is based in part on May and June 2011 incidents,³ the Court
 20 finds Mr. Vaster's 2012 Offender Complaint timely grieves continued
 21 retaliation by Defendants. The grievance coordinator's response that
 22 Mr. Vaster had already "grieved the issue" to conclusion on November
 23

24 ³ Mr. Vaster's October 8, 2012 Offender Complaint references May 2012. ECF
 25 No. 27, Ex. 1. The Court understands this to be a typo, as the incident
 26 occurred in May 2011.

1 10, 2011, is inconsistent with the stance taken by Defendants in Mr.
2 Vaster's prior lawsuit. Because the grievance coordinator determined
3 that Mr. Vaster's October 8, 2012 Offender Complaint would not be
4 reopened or reviewed, Mr. Vaster was unable to further exhaust his
5 administrative remedies as to his retaliation claim. See *Boyd v.*
6 *Corr. Corp. of Am.*, 380 F.3d 989, 996 (6th Cir. 2004) (concluding
7 "that administrative remedies are exhausted when prison officials fail
8 to timely respond to a properly filed grievance").

9 Under the circumstances, the Court finds Mr. Vaster exhausted
10 his "available" administrative remedies as to his claim of continued
11 retaliation as of October 8, 2012.⁴ Mr. Vaster followed the required
12 grievance steps as to his claim of continued retaliation. If Mr.
13 Vaster had been restored to a laundry position at least twenty-one
14 days prior to his October 8, 2012 Offender Complaint, Mr. Vaster's
15 Offender Complaint alleging continued retaliation would not be timely
16 and he would have failed to properly exhaust available administrative
17 remedies. However, under the alleged facts and those facts set forth
18 in the documents before the Court, the Court finds Mr. Vaster
19 exhausted his available administrative remedies as to his complaint
20 that he continues to be retaliated against for exercising his right to
21 file grievances. See *Moore v. Bennette*, 517 F.3d 717, 725 (4th Cir.
22 2008) (analyzing whether the prison's conduct made further

23
24 ⁴ Whether Mr. Vaster may recover back pay for the time period preceding
25 October 8, 2012, is a matter the Court may need to address at a later
date.
26

1 administrative proceedings unavailable to the prisoner). Mr. Vaster
2 persistently sought relief from the allegation that he wrongfully
3 stole laundry, which is the purported basis for Defendants' continued
4 refusal to permit him to return to the laundry worksite. Cf. *Williams*
5 v. *Comstock*, 425 F.3d 175, 177 (2d Cir. 2005) (noting that prisoner
6 failed to explain why he waited nearly two years to file a grievance).
7 Coyote Ridge had sufficient opportunity to address Mr. Vaster's claim
8 of continued retaliation in an efficient manner.

9 **D. Conclusion**

10 The Court finds Defendants failed to support their affirmative
11 defense of failure to exhaust available administrative remedies as to
12 Mr. Vaster's claim of continued retaliation. See *Wyatt*, 315 F.3d at
13 1119 (placing burden of proof on defendant). Accordingly, **IT IS**
14 **HEREBY ORDERED:**

- 15 1. Defendants' Motion to Dismiss, **ECF No. 18**, is **DENIED**.
16 2. The Clerk's Office is to **ISSUE** a Notice Setting Scheduling
17 Conference.

18 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
19 Order and provide copies to Mr. Vaster and counsel.

20 **DATED** this 13th day of February 2014.

21 _____
22 s/ Edward F. Shea
EDWARD F. SHEA
23 Senior United States District Judge
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